IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.24 OF 2006

Bapu Bhau Darekar & Ors. ...Appellants
Vs.
Balasaheb Bapu Admuthe & Ors. ...Respondents

Mr R.D. Suryawanshi for the Appellants.
None for the Respondents.

CORAM : A. S. OKA, J.
DATE : MARCH 28, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellants. The Appellants are the original Plaintiffs. It is not in dispute that after obtaining permission under section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 the Appellants sold the suit property in favour of the Respondent No.1 by registered Sale Deed. The present suit is filed by the appellants for injunction against the Respondent No.1 not to transfer the suit land in favour of the Respondent No.3 in view of the Land Acquisition Proceedings under the Maharashtra Re-settlement of Project (Displaced Persons) Act, 1975 in respect of some other land of the Appellants.

2. The learned Counsel appearing for the

Appellants submitted that the Appellants challenged the Acquisition Proceedings by filing the Writ Petition No.712 of 1987. He pointed out that while rejecting the said Petition, Division Bench of this Court has observed that the Sale Deed dated 04th July, 1977 being subsequent to the notification under section 11 of the said Act of 1975, the sale is required to be ignored. He, therefore, submitted that in view of the said decision of the Division Bench of this Court, now the Respondent No.1 cannot claim any right, title and interest in respect of the suit land.

3. I have considered the submissions. Perusal of the order dated 13th February, 1998 passed by the Division Bench of this Court shows that for challenging the acquisition under the said Act of 1975 it was contented on behalf of the Appellants that as a result of acquisition they would become landless. It was pointed out to the Division Bench that the other property, namely, the suit land is already sold by the Appellants under Sale Deed dated 04th July, 1977. In the context of the said submission, the Division Bench has come to the conclusion that for the purposes of

considering challenge to the Acquisition Proceedings under the said Act of 1975 the sale effected on the basis of Sale Deed dated 04th July, 1987 will have to be ignored.

4. The present suit filed by the Appellants is against the Respondent No.1-purchaser simplicitor for injunction. Grant of perpetual injunction under the Specific Relief Act, 1963 is purely discretionary. Admittedly, the Appellants have sold the suit land in favour of the Defendant No.1 and have accepted the consideration. In view of this position, no fault can be found with the impugned Judgments and Decrees if discretionary relief of injunction was refused. No substantial question of law arises. Second Appeal is dismissed with no orders as to costs.

JUDGE